

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Anthony Blackwell,

Petitioner,

v.

Warden, Lebanon Correction Institution,

Respondent/Defendant.

Case No. 1:08cv158

Judge Michael R. Barrett

**ORDER**

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge Black on February 18, 2009 (Doc. 10).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.<sup>1</sup>

Having reviewed this matter de novo pursuant to 28 U.S.C. 636, this Court finds the Magistrate Judge's Report and Recommendation to be correct.

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<sup>1</sup>The "acknowledgment of service" or "green card" was returned to the Clerk of Court signifying that service had been completed. However, ten days later the certified mail envelope was also returned to the Clerk of Court as undeliverable. See Doc. 11 and 13. The Court notes, however, that a *pro se* litigant has an affirmative duty to diligently pursue the prosecution of his cause of action, *see Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991), as well as a duty to supply the court with notice of any and all changes in his address. *See Barber v. Runyon*, No. 93-6318, 1994 WL 163765, at \*1 (6th Cir. May 2, 1994) (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 815 (9th Cir. 1985)). By failing to keep the Court apprised of his current address, Petitioner demonstrates a lack of prosecution of his action. *See, e.g., Theede v. United States Department of Labor*, 172 F.3d 1262, 1265 (10th Cir. 1999) (Failure to object to a Magistrate Judge's Report and Recommendation due to delay resulting from party's failure to bring to the court's attention a change in address constitutes failure to object in a timely manner. Because the Recommendation was mailed to the last known address, it was properly served, and party waived right to appellate review).

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Respondent's motion to dismiss (Doc. 8) is **GRANTED**. The Clerk of Court is directed to terminate this matter from the docket of this Court. A certificate of appealability should not issue with respect to petitioner's claims for relief under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). With respect to any application by petitioner to proceed on appeal in *forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in "good faith," and therefore **DENIES** petitioner leave to appeal in *forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

**IT IS SO ORDERED.**

s/Michael R. Barrett

Michael R. Barrett, Judge  
United States District Court